

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOROTHY E. KOENIG

Claimant

VS.

FEDERAL EXPRESS CORPORATION

Respondent

)
)
)
)
)
)

Docket No. 214,740

ORDER

Respondent filed an application for review before the Appeals Board of a preliminary hearing Order entered by Administrative Law Judge John D. Clark dated September 12, 1996.

ISSUES

Respondent questioned whether claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent during the period of time alleged.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant sustained a work-related injury is an issue that grants the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 44-534a, as amended.

Respondent appealed Administrative Law Judge John D. Clark's preliminary hearing Order that granted claimant's request for temporary total disability and medical benefits. Respondent specifically argued that claimant's current bilateral knee problems are not a

result of a new injury but are a natural and probable consequence of claimant's pre-existing bilateral knee injuries.

On the date of the preliminary hearing, September 12, 1996, claimant had been employed by the respondent for some 17 years, 14 of those years were in the position of a courier. A courier is responsible for delivering packages which required claimant to move in and out of a van, running, climbing, and jumping some 100 times per day. Claimant experienced a sharp pain in her left ankle and knee while she was working for the respondent on August 22, 1995. She notified the respondent of her left knee problem and sought medical treatment with Kenneth A. Jansson, M.D., an orthopedic surgeon in Wichita, Kansas, on August 31, 1995. Claimant had previous knee injuries all connected with her employment with the respondent. Claimant had surgery on her right knee in 1990, surgery on her left knee in 1993, and a second surgery performed by Dr. Jansson on her left knee on May 31, 1994. Dr. Jansson released claimant after the May 31, 1994, surgery on July 11, 1994, to return to her job as a courier without any permanent restrictions.

Dr. Jansson's medical records were admitted into evidence and showed claimant had not required further treatment for her left knee from Dr. Jansson until August 31, 1995, for complaints associated with the August 22, 1995 incident. After examining claimant on August 31, 1995, Dr. Jansson thought claimant had torn her lateral meniscus in her left knee. He gave her anti-inflammatory medication and told claimant to think about another arthroscopy surgery. Claimant returned for further treatment from Dr. Jansson on December 28, 1995, January 29, 1996, February 28, 1996, and April 17, 1996. Starting with the December 28, 1995, appointment, claimant complained of pain in both knees. The doctor opined "I think this working on her feet all day is really starting to add up on her." The February 28, 1996 treatment note contained the following statement, "For the record, I told her I think both of her problems are very obviously connected to her work." Dr. Jansson took claimant completely off work from April 17, 1996, to May 1, 1996. He then returned her to work on May 1, 1996, to a job with no more than two hours standing or walking in an eight-hour day. Respondent, upon receipt of that restriction, took claimant off of work from the courier job and did not return her to work until July 30, 1996. At that time, respondent offered claimant, and claimant accepted, a part-time dispatching job which claimant was performing on the date of the preliminary hearing.

Claimant established that following the August 25, 1996, incident, both of her knees worsened as she performed the vigorous job duties as a courier. In order to continue to perform the courier job duties during this period of time, claimant was given cortisone injections and took anti-inflammatory medications six to eight times per day.

The Appeals Board concludes that claimant has established that she had an incident at work on August 22, 1995, that made her left knee symptomatic. Following that incident, both of her knees became symptomatic and worsened because of the vigorous physical requirements of her job. Furthermore, Dr. Jansson's treatment notes clearly establish that claimant's current bilateral knee problems are related to her work activities.

The accident does not necessarily have to be accompanied by a manifestation of force. A personal injury can occur under the stress of usual work. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). Also it is well established that where a work-related accident aggravates, accelerates, or intensifies a pre-existing condition the resulting injury is compensable. See Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 49, 611 P.2d 180 (1980). The Appeals Board finds that the preliminary hearing Order of the Administrative Law Judge should be affirmed. The preliminary hearing record has established that claimant's work activities have aggravated her pre-existing bilateral knee condition causing claimant to be taken off work and in need of medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated September 12, 1996, should be, and the same is, hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: William L. Townsley, III, Wichita, KS
Gary A. Winfrey, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director